

SYSTEMSTATS

North Carolina Criminal Justice Analysis Center

Governor's Crime Commission

Dispositional Outcomes of Domestic Violence Ex-Parte and Domestic Violence Protective Orders

Introduction and Study Rationale

The North Carolina Criminal Justice Analysis Center (NCCJAC) is the research and evaluation section of the Governor's Crime Commission (GCC), a division of the North Carolina Department of Crime Control and Public Safety. At the beginning of the year, the Executive Director of the state's Domestic Violence Commission made a request to NCCJAC for a research study on domestic violence protective orders and temporary custody decisions. The request was based on the Commission's policymaking interest in the issue, and a concern that there may be some barriers to safety for victims related to this process.

The study looked specifically at ex-parte and domestic violence protective order cases. Of considerable interest was how frequently custody was requested by plaintiffs and defendants and what the outcome of those requests were.

Legal Definitions

North Carolina has had a domestic violence statute (N.C. G.S. Chapter 50B) since 1979. This statute has undergone several revisions and amendments over the years which have worked to strengthen it and its provisions. According to these statutes, victims of domestic violence have two types of domestic violence protective orders at their disposal for requesting assistance for themselves and their minor child(ren).

An ex-parte order is normally issued by a district court judge but may also be issued by a magistrate if prior authorization is granted by the chief district court judge for that magistrate to grant such orders and if a judge is not available. This order sets up conditions designed to provide immediate emergency relief until a full hearing can be held. If issued by a magistrate, the order is valid for 72 hours with a full hearing before a district court judge to follow. If issued by a district court judge, the ex-parte order is valid for the period speci-

fied in the order, and may be renewed periodically until a permanent order is issued.

A Domestic Violence Protective Order (DVPO) is issued after the domestic violence court hearing if the district court judge finds in the plaintiff or victim's favor. These orders are designed to bring about a cessation of acts of domestic violence and provides for relief and other forms of assistance to the plaintiff and/or the plaintiff's minor child(ren). These DVPO's are valid for one year and may be reissued by the courts for an additional year if warranted. These two orders are often referred to as the emergency or "10 day" order and the "permanent order".

It is important to note that in North Carolina the eligibility requirements for applying for a protective order are broad and can encompass numerous relationships outside of those involving intimate partners. Because of this standard for eligibility, it is possible that the plaintiff and defendant in a protective order proceeding are not involved in a dating or marital relationship; they may be housemates or family members.

Methods

Survey Sample

The State Bureau of Investigation's website provided a sampling frame which listed the number of ex-parte and Domestic Violence Protective Orders granted for each of the 100 counties in North Carolina during the calendar year 2000. Using this frame, the list was divided into quartiles based upon the number of orders which were issued. A stratified proportionate sample of twenty-five (25) counties was selected. They were: Mecklenburg, Wake, Cumberland, Gaston, Forsyth, Durham, Buncombe, Davidson, Cleveland, Cabarrus, Randolph, Rowan, Brunswick, Johnston, Iredell, Caldwell, Moore, Richmond, Henderson, Burke, Lenoir, Yadkin, Caswell, Anson, and Carteret.

Survey packets including the survey, instructions, and an introductory letter explaining the project were sent to the clerk of court in each of the 25 sample counties. A copy of the letter was mailed to the Chief District Court Judge in each of the counties. The Clerk of Court was asked to participate in the study by requesting that appropriate staff complete surveys on each of the ex-parte and Domestic Violence Protective Orders which were issued during a specified two week study period. Some counties completed the survey retroactively while some completed them while the process was occurring.

Of the 25 counties, there was an 88% (22 counties) return rate of completed surveys. Out of the 474 surveys received, 245 related to ex-parte orders (56.1%) and 192 (43.9%) related to completed domestic violence protective order hearings. The remaining 37 surveys did not specify the type of domestic violence protection order.

Survey Instrument

As a means to solicit the desired information, the survey featured 48 items and a section where the respondent could make comments. Survey compilations were based on the current Domestic Violence Protective Order forms produced by the North Carolina Administrative Office of the Courts (AOC). The data were accessible through the completed Domestic Violence Protective Order paperwork, specifically the Complaint and Motion and Ex Parte Order forms. In addition, examination of the form titled,

"Identifying Information About Defendant Domestic Violence Action" yielded the plaintiff's age and race/ethnicity.

The survey was subdivided into five different sections.

The first section included demographic information about the plaintiffs who requested an ex-parte and/or a DVPO.

The second section contained a single item about the defendant who requested custody of the minor child(ren).

The third section of the survey contained an item asking if the plaintiff made a statement regarding the safety of the children in relation to the defendant. In addition, the plaintiff was asked if the court found the minor child(ren) were "exposed to a substantial risk of bodily injury or sexual abuse." This is the standard that is specified within Chapter 50B for the court to order temporary custody of the minor children.

The fourth and largest section of the survey focused on items concerning the plaintiff's requests for relief and any relief granted by the court as the result of the request.

The last section of the questionnaire asked for miscellaneous information such as the county in which the DVPO was filed and two questions regarding the presence of any other court proceedings in progress between the plaintiff and the defendant. Respondents were also given an option of indicating their position or role (i.e. Clerk of Court, victims' advocate, witness assistant, etc.) as well as a final opportunity to express any pertinent comments.

Results and Discussion

Plaintiff Demographics (Entire Sample of Ex-Parte and DV Hearing Orders)

An analysis of the results reveals the following demographic profile, or snapshot, of those plaintiffs for which demographic attributes were available on the Ex-Parte and Domestic Violence Protective Order (DVPO) hearings. The youngest plaintiff in the study sample was eight years of age, with the oldest plaintiff being 77 years old. The average age of the plaintiff study population was 34 years of age.

Of the plaintiffs who identified his/her gender, 398, or 86.5 %, were female with the remaining 62, or 13.5%, being male.

Racial characteristics closely mirrored the general population of North Carolina with 243, or 59.3%, of the plaintiffs identifying themselves as Caucasian. African-Americans were over-represented in comparison to the membership in the general population. They accounted for 35.9% of the sampling pool or 147 respondents.

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Asian/ Pacific Islanders represented one percent of the study sample with American Indian plaintiffs filing less than one percent of the total number of DV protective orders. Fourteen, or 3.4%, claimed membership in other racial groups.

Table 1 depicts a cross-tabulation for plaintiff race by gender. Caucasian females comprised the largest percentage of the plaintiffs (51.6 % of the total sample) followed by African-American females (29.7%). No significant differences existed for the males. However, Caucasian males filed slightly more DV protective orders than their African-American counterparts.

Table 1 Domestic Violence Protective Orders Filed by Race and Gender

Gender/Race	White	African-American	Indian	Asian/Pacific	Other
Male	30 (7.4%)	26 (6.4%)	-----	-----	-----
Female	210 (51.6%)	121 (29.7%)	2 (.5%)	4 (1%)	14 (3.4%)
Total	240 (59%)	147(36.1%)	2 (.5%)	4 (1%)	14 (3.4%)

Note: The percentages in this table do not necessarily exactly match those reported above due to differences in the denominators; i.e. missing data affects the differing base calculations and subsequent percent distributions.

Information on the plaintiff's ethnicity was included on the survey, but in many cases the person in the Clerk of Court's office had to directly know this information since some surveys were completed retroactively. Thus the findings in this area should be viewed with caution because they probably grossly underestimate the number of Hispanics/ Latinos who seek domestic violence assistance from the courts. Only five plaintiffs (1.2%) were identified as being Hispanic/Latino, while 250 plaintiffs (59%) were identified as non- Hispanic/ Latino.

Data regarding ethnicity were unavailable for the remaining 219 (46.2%) survey cases. Thus it is unwise to draw conclusions or make generalizations based upon the paucity of data regarding Hispanic/Latino ethnicity. Study limitations directly affect these

findings and further investigation and research should be conducted to ascertain how Hispanics/Latinos are involved in ex-parte and domestic violence protective orders. Also, researching what types of assistance may benefit them in these court processes is important.

The following two sections of this report will examine the plaintiffs' relationships to the defendants, the various forms of relief which the plaintiffs' seek and how the magistrates and courts are responding to these requests. Information must be presented separately for ex-parte and DV protective hearing orders because the two have distinct court processes. These differences also exist in the form of relief granted to the victims of DV.

Further investigation and research should be conducted to ascertain how Hispanics/Latinos are involved in ex-parte and domestic violence protective orders.

Ex-parte Domestic Violence Orders

Figure 1 Relationship Type

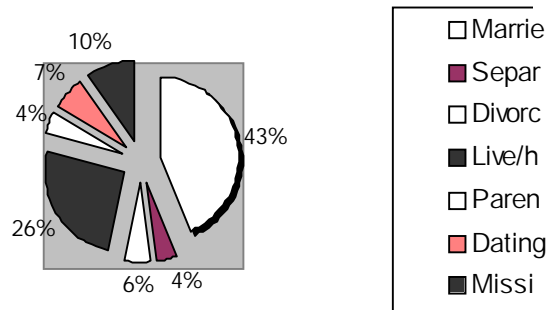


Figure 1 depicts the “relationship type” between plaintiffs who filed ex-parte orders during the study period and their defendants. The most common was “married” with 107 respondents (or 43% of the plaintiffs). Couples who were currently living together at the time the order was filed, or had lived together in the past was the next most common relationship type (N=63, 26%). Currently “dating” or previously dating and divorced were less frequently reported. Separated and parent or grandparent to child were also found to be less common plaintiff/defendant relationship types. Of these relationships, 86 percent involved partners who were, or had been, in an intimate relationship while only four percent involved non-intimate relationships.

Of those plaintiffs who filed an ex-parte order during the study period, 133 or 56.8%, reported that they did have children in common with the defendant. Overwhelmingly, the children were found to be in the

custody of the plaintiff (N=102 or 88.7 percent). An examination of the plaintiffs’ statements to the court regarding the defendants’ attempted or actual infliction of bodily harm to a child, and/or the defendants’ commitment of a sexual act on the child reveals that 68 (35.8%) plaintiffs responded in the affirmative. In 35 of the above 68 cases (51.5%), the courts concurred that the plaintiffs’ children were “exposed to a substantial risk of bodily injury or sexual abuse.”

Court ordered visitation was authorized for only four, or 2.6%, of the ex-parte cases with none of the survey cases requiring that the visitation be supervised by a third party.

The most common “relationship type” between plaintiffs who filed ex-parte orders was “married” with 107 respondents (or 43% of the plaintiffs).

Table 2 Plaintiff Request for Relief by Court Authorized Relief

Relief/Service Requested	Number & Percent of Ex-Parte Filings
Defendant not interfere with plaintiff's child(ren)	186 (83.8%)
Possession of residence	95 (42.8%)
Plaintiff request eviction of defendant	73 (32.3%)
No contact with plaintiff	209 (89.7%)
Possession & use of vehicle	66 (28.9%)
Temporary custody of minor children	90 (50.6%)
Temporary payments to support children	59 (35.3%)
Defendant ordered to attend abuser treatment	111 (48.9%)
Defendant provide suitable alternative housing	22 (10.8%)
Defendant ordered to make support payments	46 (21.9%)

Note: The percentages for the first column of data were computed based upon available data, (N=245) was not always used as the denominator.

Table 2 presents the number and percent of plaintiffs who requested a variety of available services or court offered relief in response to their ex-parte protective orders filing request. The table also reveals the number and percent of plaintiffs who were granted these services or were authorized by the courts to receive them. As the table demonstrates, the four most commonly sought services or court relief among those plaintiffs filing ex-parte protective orders were¹: that the defendant have no contact with the plaintiff, nor interfere with the plaintiffs' child(ren), to receive temporary custody of the minor children and that the abuser be mandated to receive domestic violence treatment.

Little concordance existed between what the plaintiffs requested and what the courts granted. The top four court ordered services or relief requests which were awarded included: the plaintiff claiming possession of the residence, the defendant having no contact with the plaintiff, the plaintiff being given possession of a vehicle and, the defendant being evicted from the shared place of residency. The greatest discordance occurred between the percent of plaintiffs requesting that the defendant not interfere with the minor children and the courts granting this request. A great degree of disparity also existed between the request for child support payments and the extent

¹ Calculated based upon the percent requesting the relief and not the total number.

to which this request was granted by the courts. Similar rates of discordance were also found for the plaintiffs' request that the defendant be mandated to abuser treatment, the request for temporary support payments for both the plaintiff and children, and for alternative housing. Requests for temporary child custody were concordant with about half of the plaintiffs requesting this service and an equal number being granted custody by the courts.

The plaintiff is receiving the types of relief which are most closely associated with safety issues and keeping the defendant at a distance, i.e. possession of the residence and a vehicle. Relief not as closely associated with safety issues, i.e. monetary support, and abuser counseling are being either deferred or rejected at the ex-parte filing process.

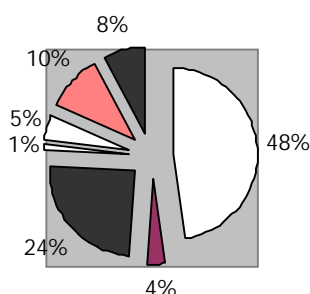
Another example of this balancing act between plaintiffs' safety and defendants' rights, can be found in the areas of physical contact with the former and

firearm possession toward the latter. Nearly 100% of the plaintiffs who requested the defendant remain away from them and/or their child(ren) were granted this request (N=230, 97.9%). This offering of immediate safety, via keeping the defendant at a distance, was granted irrespective of location. Plaintiff requests to keep the defendant away from their homes, workplaces, child(ren)'s daycare and schools, and other places that the plaintiff may frequent were granted in nearly 100% of the ex-parte filings.

Similar findings were found regarding the plaintiffs' requests to prohibit the defendant from having firearms and the courts granting this type of relief. Defendants' restricted access to firearms was ordered for 92% of the requests. Indeed, in many cases the defendant was prohibited from possessing firearms even when the plaintiff did not request this relief. This is consistent with existing federal legislation in this area; i.e. the Lautenberg Amendment.

Domestic Violence Protective Order Hearings

Figure 2 Relationship Type (Domestic Violence Protective Order Hearings)



"Married" (48%), currently living together or had lived together (24%), and dating (10%) were the three most common relationship types for both ex-parte and DVPO hearing cases.

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Table 3 Plaintiff Request for Relief by Court Authorized Relief (DVPO Hearing)

Relief/Service Requested	Number & Percent of Ex-Parte Filings	Number & Percent Authorized by Court
Defendant not interfere with plaintiff's child(ren)	149 (86.6%)	41 (27.5%)
Possession of residence	75 (42.9%)	58 (77.3%)
Plaintiff request eviction of defendant	64 (36.6%)	45 (70.3%)
No contact with plaintiff	161 (91.5%)	116 (72.0%)
Possession & use of vehicle	48 (28.7%)	31 (64.6%)
Temporary custody of minor children	70 (51.5%)	29 (41.4%)
Temporary payments to support children	43 (32.6%)	9 (20.9%)
Defendant ordered to attend abuser treatment	84 (48.6%)	3 (3.6%)
Defendant provide suitable alternative housing	11 (6.9%)	0 (0%)
Defendant ordered to make support payments	34 (22.8%)	5 (14.7%)

Note: The percentages for the first column of data were computed based upon available data, thus the full number of DVPO Hearing orders (N=192) was not always used as the denominator.

Survey questions also dealt with the issue of other pending court proceedings between the plaintiff and defendant. Child custody actions or hearings were found to be present for seven percent of the ex-parte filings. Other court proceedings or processes accounted for 25% of the ex-parte protective orders included in the study sample. It should be noted that the survey respondents possibly did not know about other court proceedings and consequently the number of other proceedings could be higher than reported.

As Figure 2 on page 6 demonstrates, the distribution of relationship types for the Domestic Violence Protective Order hearings parallels the distribution for the ex-parte orders discussed above. “Married” (48%), currently living together or had lived together (24%), and dating (10%) were the three most common relationship types for both ex-parte and DVPO hearing cases.

DVPO hearing survey results indicate that the plaintiff and defendant had children in common for 55.3% of the survey cases. For 92.6% of the cases, the children were reported to be in the custody of the plaintiffs. As with the ex-parte orders, the defendant requested custody in 20% of the DVPO hearing cases. The percentage of plaintiffs who claimed that the defendant attempted or actually inflicted bodily harm or sexually assaulted minor child(ren) was comparable to the percentage reporting this under the ex-parte cases (DVPO hearings, 35.3 % versus ex-parte, 35.8%). However, significant differences emerged with respect to the court findings in this area. At the DVPO hearing phase, the courts were far less likely to concur with the plaintiffs’ assertions that the defendant exposed minor child(ren) to substantial risk. The courts found substantial risk in only 27.7% of the DVPO hearing cases versus 51.5% for the ex-parte orders. This finding raises several questions. Are the plaintiffs manipulating the system at the ex-parte filing or are the courts simply getting more information about the defendants’ treatment of the child(ren) at the DVPO hearing phase? Are the courts applying a different standard at each of these proceedings? Are the judges purposively restricting the number of court hearings?

At the DVPO hearing phase, the plaintiffs’ most common request for relief was that the defendant have no contact with the plaintiff (91.5%), followed by the request that the defendant not interfere with the plaintiff’s child(ren) — 86.6%. The third most common request was to obtain temporary custody of the minor child(ren) — 51.5%, followed by the request that the defendant receive some form of abuser treatment — 48.6%. These are the exact same types of relief that the plaintiffs who file ex-parte orders seek from the courts. These requests also illustrate what seems to be most critical to the victim’s sense of safety – that the defendant not abuse the victim or the victim’s children, that the children remain with the victim, and that the defendant receive treatment for the battering behavior.

The four most common types of relief or services that the courts are authorizing for the plaintiffs are: possession of the residence (77.3%), the defendant having no contact with the plaintiff (72.0%), the defendant being evicted from the residence (70.3%) and the plaintiff being awarded possession of a vehicle (64.6%). As with the ex-parte orders the courts are awarding the exact same types of relief at the DVPO hearing phase. In contrast to what type of relief victims request, these awards have more to do with logistical aspects of property – possession of the home and the vehicle.

A greater degree of concordance between plaintiff request and court authorized relief was found to exist for the granting of temporary custody to the plaintiff and that the defendant be ordered to make support payments as required by law. Discordance existed for the plaintiffs’ request that the defendants not interfere with the involved minor child(ren), and that the defendants make child custody payments and attend abuser treatment. Discordance was also found regarding the request for suitable alternative housing with none of the plaintiffs receiving this type of court ordered relief. This is anticipated in light of the fact that a large percentage of the plaintiffs were granted possession of the shared residency.

Plaintiffs' requests that the defendants remain away from the plaintiffs' worksite, home, school, child(ren)'s school and daycare were granted in 177 or 96.7% of the DVPO hearing cases. As with the ex-parte orders, the requested location was irrelevant with the plaintiffs' requests being granted 100% of the time independent of any specific location.

At the DVPO hearing phase, 82.3% of the plaintiffs requested that the defendants be limited in their access to firearms. Of those cases in which this request was made, the court restricted or prohibited the defendants from having access to firearms 85% of the time. This percentage is slightly lower compared to the percentage in which the courts denied defendants' firearm access at the ex-parte filing.

Only two (1.3%) DVPO hearing cases had associated custody actions or processes pending between the affected parties. Slightly more than a quarter (28.7%) had other on-going or forthcoming court actions or processes scheduled between the plaintiff and defendant.

The courts mandated visitation for 17 or 15.3 % of the DVPO hearing cases of which seven or 41.2% required supervision by a third party.

A comparison between the types of plaintiff requests and types of relief offered by the courts by the type of DVPO is enlightening. With the exception of four factors, it appears that there are no significant differences between what occurs during the ex-parte filing and the DVPO hearing phase. The percentage of defendants which have firearm access restricted is slightly lower at the DVPO hearing phase as is the courts finding that the defendant is likely to pose a substantial risk to the safety of the minor children. DVPO hearing plaintiffs are more likely to have court ordered visitation; the courts also demonstrate a greater likelihood of granting support payments. This finding is controversial given the distinct statutory differences between the purpose of an ex-parte order and a DVPO hearing order. This leads to the following questions: Why are the plaintiffs requesting the same types of relief? Why are the courts responding relatively the same irrespective of the type of domestic violence protective order?

Policy Implications and Questions for Further Study

Many of the policy issues which arise from the study findings should be addressed by convening focus group(s) composed of DV service providers, other victim advocates, magistrates, Clerks of Court, judges, plaintiffs and their attorneys, and other members knowledgeable of the DV protective order process. Study findings will also be used by the Domestic Violence Commission to inform policy development. The following are some of the issues which need further research and clarification.

1. The focus of this study included whether or not courts were addressing the issue of temporary custody when a plaintiff specifically requests it. The study showed that 88.7 percent of plaintiffs who had children in common with the defendant had custody of those children. Thirty-five percent of those plaintiffs alleged that the defendant had attempted or inflicted bodily harm or committed or attempted to commit a sexual act upon the child. In half the cases, the court agreed with the plaintiff's assessment.

The study found that plaintiffs request temporary custody 50 percent of the time. The study found that courts granted custody (to either party) in 48.9 percent of those cases where it was requested. Therefore, in more than half of the cases, the court is silent on the issue of temporary custody. Possible reasons may include the court's reluctance to address this issue in the context of an abbreviated hearing. The court's interpretation of the standard required to address the issue, or the court's attempts to address the same issue in a way other than temporary custody. In addition, the data also indicate that a very small percentage of the cases had other custody actions pending. That finding seems to suggest that the issue of custody being addressed within a different forum does not supply an explanation for the lack of court decisions regarding temporary custody. This issue deserves further discussion including whether current statutory language is adequate, ascertaining the level of consensus on the role temporary custody plays in the safety of a plaintiff and children, and the interpretation of the standard outlined in the statute by the courts.

2. Although there was not a high level of granting the plaintiff's request that the defendant not interfere with the minor children there may be some relationship between "interfering with a minor child" and an order of temporary custody. This relationship may provide some explanation for the low level of temporary custody orders. For example, the courts may limit the batterer's contact with the child via this provision without awarding temporary custody.
3. The data clearly indicates that the types of relief that are most frequently requested by plaintiffs are those that are most closely related to their own safety and/or the safety of their minor children. The data are also clear that, with one exception, the types of relief requested are not the same as the types of relief most frequently granted by the courts. Plaintiffs most frequently request that the defendant have no contact with them, that the defendant not interfere with the plaintiff's children, that the plaintiff obtain temporary custody of the minor children, and that the defendant receive some form of offender treatment. Courts most frequently grant possession of the residence, order the defendant to have no contact with the plaintiff, evict the defendant from the residence and award the plaintiff possession of a vehicle. This finding requires further analysis.

The findings show that the courts are not ordering defendants to attend abuser treatment. The plaintiff requested this type of relief in 48 percent of the cases. Treatment was ordered in 3.6 percent of the cases. It may be that treatment is not available locally or that the courts see the treatment as somehow prohibitive or not appropriate. The domestic violence statute requires that the treatment be within a "reasonable distance" and that the program be approved by the North Carolina Department of Administration which has adopted a set of operating standards including length of intervention, fee structures and content. This finding should be further analyzed.
4. Why are the courts denying plaintiff requests that the defendant not have contact with firearms despite federal law which mandates no such contact?
5. To what extent are the courts failing to issue ex-parte orders and why?
6. Likewise, how many ex-parte orders never progress to a DVPO hearing case and why?
7. Why were there so few Hispanic/Latinos in the study sample? Was this a flaw of the data collection process or is it indicative of the population in general? If it is not indicative and Hispanics/Latinos are filing more orders are there issues of access to the court system for this group that should be addressed?
8. Further exploration should be directed to ascertaining why there are so few court ordered visitations. Findings may be related to available resources for court ordered visitation or may be related to the court's assessment of risk. This finding appears to be highly related to the issue of custody and interfering with minor children and therefore should be further considered within that context.
9. Explore why temporary child support payments are rarely authorized.
10. Even though the study did not address the length of DVPO hearings it is recommended that this issue be investigated in more detail. Specifically, how long does the average hearing last and what transpires during this time period?



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